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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/687,207

10/16/2003

Kenneth W. Johnson

409297

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05/22/2006

LATHROP & GAGE LC

2345 GRAND AVENUE

SUITE 2800

KANSAS CITY, MO 64108

EXAMINER

NGUYEN, TAM M

ART UNIT

PAPER NUMBER

3764

DATE MAILED: 05/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/687,207

Applicant(s)

JOHNSON, KENNETH W.

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 5, 6 and 11-13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.


**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME DONNELLY  
PRIMARY EXAMINER

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6-27-05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Cones (4,509,742).

1. As to claim 1, Cones discloses an apparatus comprising a first lever (18), a flywheel (16), having bores (19), rotatably mounted on a support, means for releasably mounting the first lever with one of the bores, a seat (12) positioned at a distance from the flywheel wherein mounting the first lever within a different bore of the plurality of bores changes the path of motion of the user's extremity (see Fig. 1).

Claims 1-4, 7-10, 14 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Butler (5,316,532).

2. As to claims 1-4, 7-10, 14 and 15 Butler discloses an apparatus and inherently a related adjustment method, the apparatus comprising a first lever (58), a flywheel (46), having bores (48), rotatably mounted on a support, means (56) for releasably mounting the first lever with one of the bores, a seat (64) positioned at a distance from the flywheel wherein mounting the first lever within a different bore of the plurality of bores changes the path of motion of the user's extremity (see Fig. 1). Butler further discloses that the flywheel is mounted with a hub connected with a support, and the flywheel

includes a crank (44) and a second lever (56) rotatably mounted with the crank such that a user may rotate the flywheel by imputing forces on the levers with his extremities (see Fig. 2 & Col. 4, lines 34-37). Butler also discloses a second plurality of horizontally aligned bores as substantially claimed (see Figs. 1 & 4).

***Allowable Subject Matter***

3. Claims 5, 6 and 11-13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Butterworth '139 discloses a crank having a plurality of bores to allows for the radial adjustment of levers.

Saringer et al. '941 discloses a disk having a plurality of bores to allows for the radial adjustment of levers.

Scelta et al. '338 disclose a flywheel having radially adjustable levers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

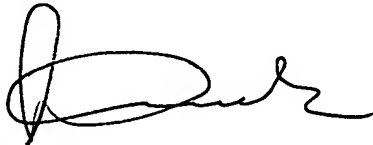
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3764

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

May 12, 2006

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A handwritten signature in black ink, appearing to read 'Jerome Donnelly', with a stylized, cursive script.

JEROME DONNELLY  
PRIMARY EXAMINER